AFTERNOON SESSION

Friday, April 23, 1909

The Society reassembled at 2.25 o'clock p. m., pursuant to adjournment. In the absence of a vice-president, Brigadier General George B. Davis, judge advocate general of the War Department, a member of the Executive Council, took the chair.

The CHAIRMAN. The President of the Society this morning alluded to the recent conference in London, which was called at the suggestion of the English government with a view to providing some conventional rules for the guidance of prize court of appeals in the decision of cases. We are to have the pleasure this afternoon of listening to two eminent naval officers, one of whom represented the United States at that conference and the other has just returned from sea in command of the great fleet which has circumnavigated the world.

I take great pleasure in presenting Rear Admiral Stockton, the delegate of the United States to the London Conference, who will tell you something about the results of that conference.

ADDRESS OF MR. CHARLES H. STOCKTON, OF WASHINGTON, D. C.

Mr. Chairman, and Gentlemen of the Society: In following the suggestion that I should present a review of the proceedings of the Conference in London, it occurred to me that I might avail myself of the paper that had been prepared at the instance of the INTERNATIONAL LAW JOURNAL of this Society, so that the review will be more consecutive and I hope more clear.

The cause for the creation of this conference and for its resultant codification of naval prize law can be found in the convention to establish an International Prize Court drawn up and signed at the Second Hague Conference by most of the powers in attendance.

Article 7 of this convention reads as follows:

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself, or whose subject or citizen is a party to the proceedings, the court is governed by the provisions of the said treaty.

In the absence of such provisions, the court shall apply the rules of international law. If no generally recognized rule exists the court shall give judgment in accordance with the general principles of justice and equity.

The above provisions apply equally to questions relating to the order and mode of proof.

There was and has been considerable delay in obtaining signatures for this convention after it was agreed upon. On January 10, 1908, Germany, Brazil, China, Spain, Great Britain, Italy, Japan, Portugal, Russia, and Turkey among the greater powers had not signed, while practically there had been no ratifications. This delay was due to the vagueness of the article just quoted on the part of the great powers and also to the method of apportionment of representation upon the bench of judges on the part of the smaller powers. The state most concerned in the establishment of this prize court and in the questions of belligerent and neutral rights involved was unquestionably Great Britain, as the possessor not only of the greatest navy in the world, but also of the largest mercantile marine and seaborne trade. So essential is sea power and commerce to Great Britain that without it as a paramount influence she would shrink from a world-wide empire to an unimportant group of islands on the western face of Europe with detached, heterogeneous and widely separated dependencies.

The Russo-Japanese war had recently made it evident to Great Britain not only how much a neutral trade could suffer and be interfered with vexatiously in a war whose area of operations was far removed from a home country; but also the disadvantages of the trial of her ships as prizes by foreign courts with rules at variance with her own usage and jurisprudence. It had long been well known that many of the continental doctrines of belligerent rights and duties were at variance with her own doctrines and those of the United States and Japan, but it had also become evident to keener minds of these latter countries that much of their own doctrine and practice

had become obsolete since the time of the French and more especially the Napoleonic wars.

It was then natural that Great Britain, much as she desired a prize court of impartial bias, hesitated to sign the convention with its governing generalities and vague expressions of benevolent equity. Any court constituted by the convention would have been composed of judges, a large majority of whom would have been appointed by states whose geographical conditions, national interests and traditional doctrines would place them as members of a school opposed to much in theory and practice to that adopted by Great Britain, inherited by the United States of America, and from which Japan had drawn her text books and authorities. As a result of this situation and for the purpose of evolving order out of the chaos, the British government on the 28th of February, 1908, sent a circular note to various powers inviting them to join in a conference, the object of which should be to arrive at an agreement as to what were the generally recognized principles of international law referred to in the second paragraph of article 7 of the prize court convention. It became more and more evident that the greater the uncertainty was the greater and more unlimited became the power of the court, and the more dangerous and unsatisfactory might become its decisions.

In its call for a conference, the government of Great Britain stated, that the rules by which appeals from national prize courts would be decided affected the rights of belligerents in a manner which would be far more serious to the principal naval powers than to others, and consequently His Majesty's Government at first communicated only with the governments of Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain and the United States of America. To these powers the Netherlands were added as the home of the Hague Conferences and the seat of the proposed international prize court, thus making ten powers in all.

The original proposition named the time of the assembly of the conference as October 1, 1908, with the suggestion that it should meet in London. The time of the meeting was afterwards postponed until the first of December of that year, but the first actual session took place on the fourth of that month at the Foreign Office in London.

The questions which the British Government were particularly anxious to have considered and upon which they were desirous that an understanding should be reached " were those as to which divergent rules and principles have been enforced in the prize courts of different nations. It was therefore suggested that the following questions should constitute the programme of the conference: "

(a) *Contraband,* including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy, and the rules with regard to compensation when vessels have been seized but have been found in fact only to be carrying innocent cargo;

(b) *Blockade,* including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized;

(c) The doctrine of continuous voyage in respect both of contraband and of blockade;

(d) The legality of the destruction of neutral vessels prior to their condemnation by a prize court;

(e) The rules as to neutral ships or persons rendering " unneutral service " (" assistance hostile ");

(f) The legality of the conversion of a merchant vessel into a warship on the high seas;

(g) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities;

(h) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

The British Government further stated that unless some agreement should be arrived at with respect to most of the topics just mentioned that it would be difficult, if not impossible, for it to carry the legislation necessary to give effect to the convention unless they could assure both houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed.

In order to expedite matters it was further suggested that on some date prior to the meeting of the conference the participating governments should interchange memoranda setting out concisely what they regarded as the correct rule of international law upon each of the above points, together with the authorities upon which that view was based.

This latter suggestion was duly accepted and the various memoranda with the consequent bases for discussion were prepared and interchanged and finally bound together, forming what was known in the conference as the " Red Book." This volume with its arranged grouping greatly facilitated the work of the conference and contributed to the success of its labors. The matters upon which the Second Hague Conference had come to an agreement, but had not formulated, bearing upon the subjects before the conference were also availed of to further the purposes of our meeting. Especially was this the case in the list of absolute contraband to which the conference always returned as a finality.

It will be seen that the call of the British government excluded various subjects which bore more directly as to the action of one belligerent upon another. As this was not linked with the question of a prize court it leaves still a few unsettled questions to be agreed upon before the complete war code of the sea can be drawn up as a finality.

In the earlier stages of its inception this international conference was known as the " International Maritime Conference," but on the eve of its meeting and before actual assemblage the name was changed by the British Government to that of the " International Naval Conference," and by this name in English and its official title in French " La Conférence Navale de Londres " it is and will be known to the world.

The conference represented ten naval powers and consisted of thirty-seven delegates, thirteen of whom were delegates plenipotentiaries. It was composed of jurists, diplomatists and naval officers. Fourteen of the thirty-seven delegates were naval officers, three of whom headed their delegations as first delegates. Many of the delegates had been members of one or the other of the Hague Peace Conferences, and consequently had both the advantages and disadvantages of being concerned in the discussions and controversies attendant upon these conferences.

The memorandum presented by the United States was referred to in its instructions to its delegation as follows:

As to the framing of a convention relative to the customs of maritime warfare you are referred to the Naval War Code promulgated in General Orders No. 551 of the Navy Department of June 27, 1900, which has met with general commendation by naval authorities throughout the civilized world and which in general expresses the views of the United States, subject to a few specific amendments suggested in the volume of international discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other powers, upon whom the rules were not binding. The whole discussion of these rules contained in the volume to which I have referred is commended to your careful study.

As to the instructions given by the various governments to their respective delegations I can only quote that of Great Britain as to the general principles for their guidance. It reads as follows:

In the general conduct of the negotiations your Lordship and the British delegates associated with you will ever bear in mind that the British Empire, like every other state, has, when neutral, everything to gain from an impartial and effective international jurisdiction in matters of prize such as it is the purpose of the forthcoming conference to establish on a sure and solid foundation and that if, unhappily, the Empire should be involved in war, it will not suffer if those legitimate rights of a belligerent state which have been proved in the past to be essential to the successful assertion of British sea power, and to the defence of British independence, are preserved undiminished and placed beyond rightful challenge. The maintenance of these belligerent rights in their integrity, and the widest possible freedom for neutrals in the unhindered navigation of the seas, are the principles that should remain before your eyes as the double object to be pursued and should at the same time serve as the touchstone by which either the equity of concessions which you may ask other powers to make, or the value of compromises to which you may be called upon to assent, can be safely and accurately judged.

On meeting, the conference was received by Sir Edward Grey, the Secretary of State for Foreign Affairs, and the Earl of Desart, the head of the English delegation, was made president of the conference. M. Louis Renault, the distinguished French jurist and publicist, was designated as chairman of the Conference when in

commission and committee, and the French language adopted as the official language of the conference, allowing the mother tongue of the delegates to be used subject to immediate translation. The official text of the declaration and of the proceedings is consequently in the French language.

The sessions of the conference in one form or other continued, with a vacation for the Christmas holidays, until the 26th of February, 1909, when the formulated declaration with the closing protocol was adopted unanimously and signed and sealed and the conference adjourned. The declaration, though agreed to by all, has been signed by the plenipotentiaries of Great Britain, France, Germany, the United States of America, Austria-Hungary and the Netherlands. It is open for signature until June 30 of this year.

The Declaration of the London Conference consists of seventy-one articles in all. Its title is "Declaration Concerning the Laws of Naval War." After a prelude in which a reference — the only one in the declaration — is made to the Hague Convention for the establishment of an international prize court, the preliminary provision states that the signatory powers are agreed that the rules contained in the following chapters "correspond in substance with the generally recognized principles of international law."

Chapter I, which follows, treats of *blockade in time of war*. The articles under this head, twenty-one in number, in the main, codify and crystallize what has been the American practice and jurisprudence with respect to that subject. Article 3, for example, stated "that the question whether a blockade is effective is a question of fact," while Article 6 recognizes the fact that permission is necessary from the commander of the blockading force when a war vessel — presumably neutral — desires to enter or leave a blockading port.

Article 15 carries with it the renunciation of the continental doctrine of a special notification on the spot for each vessel. This question of notification is contained in the three following articles:

ARTICLE 14. The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ARTICLE 15. Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the noti-

fication of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 16. If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

A matter which involved a considerable change was the extreme view contained in the Anglo-American doctrine as to the duration of the liability to capture of a blockade-runner. This liability extended according to that doctrine from departure from a home port or the initial point of voyage until a return to the same point. Not only was this not accepted by continental authorities but modern conditions had made it most annoying and vexatious to any neutral that could be involved in suspicion as to breach of blockade. The practice of attempting to enforce a blockade existing on the costs of North Eastern Asia or South Eastern Africa in the waters of the Mediterranean was not only highly resented by those not holding the Anglo-American doctrine, but it was equally vexatious when applied to English and American vessels either in the Atlantic or Mediterranean. England led off in this question by yielding in the conference as to this doctrine and we were ready to follow if proper restrictions were retained and the military value of a blockade, still one of the most powerful of naval weapons, were not lessened. Our own experience with blockade during the civil war had given us a remarkable knowledge of its value and scope that practically exceeded all other modern examples. That no blockading vessels for instance might be seen from the blockaded port is not only a condition inherited from our own and the latest wars, but was practiced even so far back as when Nelson lay off Genoa. The whole of this was reversed by the article that made the question of effectiveness a question of fact, not of visibility.

Fortunately a happy solution of the matter of liability to capture was found in prescribing that the pursuit of the blockade runner should begin only within the area of blockading operations and the capture limited to that area or in the course of pursuit initiated

within that area. This area in extent is governed by the requirements of the blockade for each place, but must be covered by the presence of a sufficient number of vessels so arranged by the commander of the blockading force as to make the blockade most effective.

The wording of the articles involving these changes is as follows:

ARTICLE 17. Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

ARTICLE 18. The blockading forces must not bar access to neutral ports or coasts.

ARTICLE 20. A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

In the general report upon the declaration the following statement as to the extension and elasticity of blockades made by Admiral Le Bris of the French navy met with general approbation:

Cases may occur in which a single ship will be enough to keep a blockade effective — for instance, at the entrance of a port, or at the mouth of a river with a small estuary, so long as circumstances allow the blockading ship to stay near enough to the entrance. In that case the area of operations is itself near the coast. But, on the other hand, if circumstances force her to remain far off, one ship may not be enough to secure effectiveness, and to maintain this she will then have to be supported by others. From this cause the area of operations becomes wider, and extends further from the coast. It may therefore vary with circumstances, and with the number of blockading ships, but it will always be limited by the condition that effectiveness must be assured.

To this statement the American delegation added "that the nature of the area of operations varied with geographical conditions, the proximity of neutral ports and the interests of neutral commerce as well as with the force employed." As an explanation of a great distance that might be required to be covered attention was called to the fact that breach of blockade had become almost entirely a night operation; and the capture of a vessel that had successfully cleared the entrance of the port could best be effected as she emerged at daybreak from the zone of darkness, and here naturally one of the outer lines of a blockading force would be placed. Hence with sixteen

hours of darkness and thirty knots speed that might well be 480 miles off.

As to the question of pursuit the American delegation stated that its interpretation of pursuit was that continuous pursuit did not necessarily mean by the same vessel but that it could be started by a vessel from one line, to be taken up in succession by one from another line and so in succession, so as to keep the vessels of the various lines in more or less established position. To this interpretation printed with the proceedings no opposition was offered.

In the general report explanatory of the article it is also stated that the question of abandonment of pursuit is one of fact; seeking refuge from pursuit in a neutral port does not end pursuit when such refuge is sought only for safety from pursuit. The pursuing ship can wait until the departure of the pursued ship so that the pursuit in this case is suspended, but not abandoned. Article 19 exempts a vessel bound for a non-blockaded port from capture for breach of blockade no matter where she or her goods are ultimately bound. This article prevents the application of the doctrine of continuous voyage as to blockade and is a concession upon our part as we were the only power holding to the contrary. This concession was in return for others mentioned elsewhere.

The next chapter of the declaration treats of the subject of *contraband of war,* probably the most important as well as the most difficult of the subjects before the conference. The result, as shown in the twenty-three articles grouped under that head, marks the greatest success of the conference both in a universal sense and in special application to our own country. The usual distinction is presented in this chapter in the classification of articles of absolute and conditional contraband, lists of which were duly agreed upon and formulated. To these two lists was added a third, liberal and well defined, containing articles which were under no circumstances during the life of the declaration to be considered as contraband.

In the first article of the chapter, numbered as article 22, is contained the list of articles that are to be considered without further notice as absolute contraband. This list is the one agreed upon at the Second Hague Conference by the committee charged with the subject

and virtually, but not formally, by the principal powers there represented. Although at least one half of the London Conference were opposed to the inclusion of horses and mules in this list it was deemed wise not to reopen the list and subject it to amendment and discussion. It is also to be observed that while naturally and usually with us, and some other states, horses were considered rather as conditional than absolute contraband, with still other countries all horses and animals of burden in the state are considered as subject to requisition and available for war purposes when the state so willed it. The articles of absolute contraband are:

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges and cartridges of all kinds and their distinctive component parts.
3. Powder and explosives especially prepared for use in war.
4. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draught and pack animals suitable for use in war.
8. Articles of camp equipment, and their distinctive component parts.
9. Armor plates.
10. War ships, including boats and their distinctive component parts of such a nature that they can only be used in a vessel of war.
11. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms or war material for use on land or sea.

If in the course of time other articles than those given in this list may be developed for war uses exclusively it is provided that they may be added to it by a declaration from one or other of the belligerents duly addressed to the other powers.

The second list — of conditional contraband — is of those articles, susceptible of use in war or for peaceable purposes, that are to be treated without further notice as contraband of war when destined for the enemy's forces. This list, contained in article 24, is as follows:

1. Foodstuffs.
2. Forage and grain, suitable for feeding animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.

4. Gold or silver in coin or bullion; paper money.
5. Vehicles of all kinds available for use in war and their component parts.
6. Vessels, craft and boats of all kinds; floating docks, parts of docks and their component parts.
7. Railway material, both fixed and rolling stock and material for telegraphs, wireless telegraphs, and telephones.
8. Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
9. Fuel, lubricants.
10. Powder and explosives not specially prepared for use in war.
11. Barbed wire and implements for fixing and cutting the same.
12. Horseshoes and shoeing materials.
13. Harness and saddlery.
14. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

In the running commentary of the general report an explanatory statement was agreed upon that *foodstuffs* include products necessary or useful for sustaining man, whether solid or liquid, which would include wines, etc.; and that *paper money* only includes such convertible paper money as bank notes which may or may not be legal tender. Bills of exchange and cheques are excluded. *Engines and boilers* are included with vessels, craft and boats, while *railway material* includes fixtures (rails, bridges, etc.) as well as rolling stock.

The third list, generally known as the free list, is preceded by article 27 which states that articles which are not susceptible of use in war may not be declared contraband of war. It is stated that the following named articles may not be declared contraband of war:

1. Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
2. Oil seeds and nuts; copra.
3. Rubber, resins, gums, and lacs; hops.
4. Raw hides and horns, bones, and ivory.
5. Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
6. Metallic ores.
7. Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
8. Chinaware and glass.

9. Paper and paper-making materials.
10. Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
11. Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
12. Agricultural, mining, textile, and printing machinery.
13. Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
14. Clocks and watches, other than chronometers.
15. Fashion and fancy goods.
16. Feathers of all kinds, hairs, and bristles.
17. Articles of household furniture and decoration; office furniture and requisites.

Likewise the following may not be treated as contraband of war:

1. Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in article 30 [*i. e.*, to an enemy].
2. Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

A great element in the matter of contraband is the question of destination. This not only makes or unmakes conditional contraband but also brings in the question of continuous voyage, one of the most troublesome of questions connected with contraband and concerning which there was probably the most radical difference of opinion. This matter has been called by the British delegation the British doctrine of continuous voyage; but its use and development during the Civil War has made it more of an American doctrine. Its connection with that war and the subsequent controversy as to the doctrine has gathered around it a great sentimental value not justified by its practical worth in these later days as a military weapon and regardless of its detrimental character to us as neutral traders and furnishers of foodstuffs when applied to blockade and conditional contraband. Considering these two phases of its use, its sentimental value is somewhat like that of the "blood-stained greenback" when applied to the economics of unlimited paper currency discussions.

Applied to foodstuffs and fuels it is also a matter of great difficulty of enforcement as such cargoes when imported in bulk into neutral

countries go at once into the common stock of those countries and are not earmarked for the use of an enemy beyond neutral borders. This difficulty cannot be said with respect to the doctrine of absolute contraband, the character of such warlike stores, for war alone, and for special national service oftener, gives a distinct clue to its destination. As a general compromise upon the subject the doctrine of continuous voyage was accepted for the first time by several nations in connection with absolute contraband, while given up by us and others with respect to blockade and conditional contraband. The free list was also formed and accepted and other concessions added to on both sides as a part of this general compromise.

Articles 33 and 34 discuss and define the destinations which make the article carried conditional contraband. Article 35 was framed to exclude the question of continuous voyage from being applied to conditional contraband. A curious endeavor has been made recently in England to read into this article a doctrine that foodstuffs are to be considered conditional contraband when bound for the enemy country without regard to enemy forces. This would make food contraband if bound to a commercial port for the ordinary civilian population. The wording of the article as shown by the general report was to prevent conditional contraband being liable to capture if bound for other than enemy territory, or in other words preventing the application of continuous voyage to conditional contraband bound to neutral ports. If the country at war, however, has no seaboard, a cargo bound to the enemy forces using an intervening port or seaboard country under article 36 is liable to seizure, as the neutral port of destination in this case is construed to be an enemy port, being the only sea approach existing.

In article 40 a much discussed question was settled as to the liability of the contraband carrier as well as the contraband goods to condemnation. By the law of nations at the close of the 18th century the act of carrying materials of war to a belligerent was regarded as a wrong for which both vessels and cargo were liable to condemnation. Since then the proportionate amount of contraband in the cargo to cause condemnation has varied with different countries, the general idea being that if the contraband part should

be sufficiently large to make its carriage a determining factor in the voyage of the ship that its mission should be construed as a hostile venture and distinctively giving forbidden aid to the enemy. In some countries one fourth of the cargo being contraband the ship was considered confiscable. With us the tendency has been to limit the confiscation of the ship to cases where fraud or bad faith on the part of the master or owner was discovered. It was generally claimed, however, and admitted at the conference that in certain cases the confiscation of the contraband and the innocent part of the cargo belonging to the owner of the contraband was not enough. As to what should determine these cases was a matter of much divergence. Finally, it was agreed that the degree of culpability should be judged by the proportionate contraband part of the cargo and that part should be more than one half of the cargo. As to the mode of reckoning, I can do no better than give the words of the distinguished General Reporter, M. Renault. He says:

> Must the contraband form more than half the cargo in volume, weight, value or freight? The adoption of a single fixed standard gives rise to theoretical objections, and also to practices intended to avoid condemnation of the vessel in spite of the importance of the cargo. If the standard of volume or weight is adopted, the master will ship innocent goods occupying space or weight sufficient to exceed the contraband. A similar remark may be made as regards the standard of value or freight. The consequence is that in order to justify condemnation it is enough that the contraband should form more than half the cargo by any one of the above standards. This may seem harsh; but on the one hand any other system would make fraudulent calculations easy, and on the other, the condemnation of the vessel may be said to be justified when the carriage of contraband formed an important part of her venture — a statement which applies to all the cases specified.

In article 44 it is provided that a neutral vessel carrying less than half contraband and hence not subject to condemnation may when the circumstances permit be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent war vessel, who is at liberty to destroy the contraband thus handed over to him. The master must give the captor duly certified copies of all relevant papers.

This does not go so far as some of our treaties upon the subject;

especially one with Prussia, now considered in force by the Empire of Germany. This requires the payment of the market price of contraband goods of the enemy port to which the vessel is bound, to be given for all contraband handed over. The loss by detention, etc., during such a transfer is to be paid also by the belligerent vessel. This treaty virtually creates a trade in contraband for which the belligerent must pay at a fictitious rate.

The next chapter of the declaration is upon the subject of *unneutral service,* and only consists of three articles. This service is classified under two heads; under the first, a neutral vessel will be condemned and will in a general way receive the same treatment as a *neutral* vessel liable to condemnation for carriage of contraband. Under the second head (article 46) a neutral vessel is liable to condemnation and in a general way liable to the same treatment as an *enemy* merchant vessel for certain specific acts of greater gravity and more direct and valuable service to the enemy.

Several propositions were made in the conference to treat as an enemy merchant vessel any neutral vessel engaging with the consent of the government of the enemy in trade forbidden to them in time of peace. This was an attempt to revive the doctrine of the rule of 1756, which would apply directly to our coasting trade and the trade with our insular possessions. To this objection was made formally and informally, and successfully, by the American delegation, and by the countries having a system of "cabotage" in principle not unlike our own. The revival of this doctrine was presented and urged by Great Britain, quoting from some American authorities in favor of its position. The importance of this question to us can be readily seen when we consider the extent of our present coasting trade on both oceans and the future development likely to follow after the opening of the Panama Canal, as well as the natural increase with time of our trade with our insular possessions in the West Indies and Pacific. The question has been left an unsettled one by the non-action of the conference but should engage the consideration of our government and be met by proper diplomatic negotiations or timely assertion of our position.

Article 47, which states that

> Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war, even though there be no ground for the capture of the vessel,

was one against which the United States withheld consent until the last moment but was assented to finally by our government as a concession not in accord with our practice, but in order to allow a harmonious conclusion.

We had however with other countries agreed to a convention drawn up at the Second Hague Conference for the adaptation of the principles of the Geneva Convention to maritime warfare to the effect in article 12 " that any warship belonging to a belligerent may demand the surrender of sick, wounded or shipwrecked men on board military hospital ships belonging to relief societies, or to private individuals, *merchant ships,* yachts or boats, whatever the nationality of such vessels." This gave a considerable precedent. In addition the resulting inconvenience was manifest to large passenger liners under merchant flags, with mails, valuable cargoes, and thousands of passengers, if they should be taken into one of the comparatively few suitable ports, subject to detention and great loss for a few persons *forming part of the armed forces of a belligerent,* but travelling incognito as passengers, unknown and unsuspected by the owners, agents or master. Adjudication would doubtless release the vessel as being without conscious guilt. Moore, in his digest, speaking of treaties between the United States and various other countries, says that,

> They clearly exemplify the opinion that the transportation on the high seas of military persons in actual service is an act the consummation of which the adverse belligerent has a right to prevent.

Granting this, the concession of allowing the neutral to prevent without further adjudication under the circumstances above, though an innovation, is, I think, to the advantage of freer trade and any abuse may well be corrected by diplomatic pressure on the part of the neutral against the belligerent whose right of examination and search exists with its consequent responsibility as a war right.

The next chapter of the declaration is devoted to the subject of the *destruction of neutral prizes.* This question, judging from the

controversial experience at The Hague, was one upon which little agreement was hoped for. The divergence between the Anglo-American and Continental schools seemed hopeless, but at London, on account of that very previous divergence, the subject was approached on both sides with moderation and concession. The continental powers submitted authorities and precedents in American history showing that we favored or permitted such action. Considering that our war code was part of our instructions and recognizing the possibility under certain circumstances of such destruction our delegation did not advocate the extreme stand taken at The Hague, especially as our own State Department in the "Knight Commander" case had further expressed itself as not being prepared to say that under certain circumstances neutral prizes could not be destroyed. The American delegation took the ground, however, that only under circumstances of great military necessity or in cases of self preservation should such action be taken. This stand was also taken by them because rigid rules forbidding such destruction might be violated by urgent necessity. England followed in the main supporting this position, and the compromise was soon arranged in committee by which only vessels that came within the limits of confiscation should be so destroyed. These articles read as follows:

ARTICLE 48. A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

ARTICLE 49. As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

ARTICLE 50. Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

ARTICLE 51. A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

ARTICLE 52. If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested in place of the restitution to which they would have been entitled.

In article 54 the doctrine is established that if a vessel should have less than half the cargo contraband under the circumstances just stated involving danger to the safety of the ship or to the operations immediately engaged the captor could destroy the contraband while releasing the vessel. This is in logical sequence of article 48.

The next chapter treats of the *transfer of an enemy vessel to a neutral* during or before hostilities. The opposition of our delegation prevented the adoption of an unlimited period before hostilities in which this transfer was virtually made invalid or doubtful.

The succeeding chapter is upon the subject of *neutral or enemy character.* Upon the question of the vessel an agreement was readily reached, making the flag carried the test of character. Upon the subject of the goods the old question of the domicile or the nationality of the owner came to the front and the first vote showed an equal division of the powers. Afterwards all of the delegations except practically our own, considering it better to have it settled either one way or the other rather than to leave it unsettled, ranged themselves on the side of nationality, but as our government was not prepared to give up domicile as a test no agreement was reached and the question remains open.

Upon the question of *exemption from search under convoy, resistance to search,* and *compensation,* the formulating of the articles was in accord with the general principles and usages held by ourselves in the past. An attempt to require a dual visit of vessels under convoy and to arrange for a divided responsibility as to giving up protection of convoyed vessels was strongly and successfully resisted by the American delegation.

The conditions under which merchant vessels may be converted into war vessels in war time was the subject of much debate resulting in no agreement at the Second Conference at the Hague, and the same result obtained at this conference. Whether it is to the interest of the United States to advocate such transformation upon the high

seas is a debatable one; at the Hague it was feared complications would arise if such were permitted. As it was there were in London other claims urged that made the matter more difficult of solution. They were the right to transform in neutral ports, for transformation without notification and for re-transformation during the war. The American delegation took a stand against the transformation in neutral ports or on the high seas and the whole matter was given up as incapable of solution.

This finishes the declaration proper which has an initial life of twelve years renewable for periods of six years each. So far as can be learned up to the present moment this declaration has received almost general commendation.

In considering as a whole this declaration it is desirable to call attention to the fact that for the first time in history the great sea powers — and consequently the great powers of the world — have agreed upon a code formulated with very considerable detail and precision, which settles many disputed questions of maritime warfare. Every one of the articles applies to neutrals as well as to belligerents in some phase or other. The greater part of the signatory powers, original and adherent, will be neutrals in any war likely to arise and such a weight of neutral power will compel an adherence to the declaration on the part of the signatory belligerents. In war time belligerents are very susceptible to such influence and naturally do not desire additional complications from neutral powers. Hence the enforcement does not require creation of additional force for police; the forces are ready and impelled by their own commercial interests. So much for the future recognition of its obligations. As for its provisions for defined contraband and free lists, for the limitation of area of capture in blockading operations, for limitation of confiscation of vessels as carriers of contraband, for the release and continuance on their course of vessels with small amounts of contraband, for the restriction of the destruction of neutral prizes to cases of urgent necessity, for the differentiating in cases of unneutral service, and for compulsory compensation in many additional cases, it has by their adoption relieved neutral cargoes and vessels from many vexatious uncertainties and neutral trade from many fetters without sacrificing any necessary belligerent rights in time of war.

One matter remains to be discussed. It was considered at the Second Hague Conference of 1907 that the convention for the establishment of the international prize court did not conflict with constitutional law and so the treaty was signed. Before the ratification was proposed, however, doubts arose whether the articles providing for the judiciary of the United States in the Constitution allowed the establishment of a court of appeals beyond the Supreme Court of the United States, our final national court, and the compulsion of that court to subject its record to such court of appeals. To meet such a constitutional objection before it was too late it was proposed by our government that the Hague Convention should have added to it by and through the London Naval Conference and its declaration or convention a new procedure by which cases from the United States court or courts should be submitted to the international court for rehearing as cases *de novo,* instead of by appeal, the parties abiding by the decisions of the international court and its findings to be observed as if it were of the originally prescribed procedure. To this proposition was added at a later period of the session of the conference another one proposing that the international prize court should have the functions and follow the procedure of the arbitral court proposed in the draft of a convention relative to an arbitral court which was annexed to a wish (*voeu*) to the Final Act of the Hague Conference of 1907.

This proposition of the government of the United States was vigorously presented by the American delegation and discussed in and out of the conference and committee. As a result a final protocol was prepared and signed by all of the plenipotentiaries present, and by the delegates representing those plenipotentiaries who had left London, which contained the following wish or *voeu:*

The delegates of the powers represented at the Naval Conference which have signed or expressed the intention of signing the convention of the Hague of the 18th of October, 1907, for the establishment of an International Prize Court, having regard to the difficulties of a constitutional nature which in some states, stand in the way of the ratification of that convention in its present form, agree to call the attention of their respective governments to the advantage of concluding an arrangement under which such states would have the power at the time of

depositing their ratification, to add thereto a reservation to the effect that resort to the International Prize Court in respect of decisions of their National Tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said convention either to individuals or to their governments and that the terms of the reservation shall form the subject of a subsequent understanding between the powers signatory of that convention.

In a report made upon the conference by the British Delegates, the subject of these propositions was thus discussed which gave reasons for the action of the conference with respect to the propositions offered by the American government and delegation:

It remains for us to speak of a matter with which, although not within the provinces of its programme, the Conference was called upon to deal in consequence of a proposal submitted at a late stage of its proceedings by the United States delegation. The proposal, * * * was intended to smooth the way for the ratification of the Prize Court Convention by the United States, whose constitution appears to place insurmountable obstacles in the way of the acceptance of the procedure governing the recourse to the International Court as laid down in that convention. In order to overcome the difficulty which, it was explained, precluded any right of appeal being allowed from a decision of the United States' Supreme Court, the Conference was asked to express its acceptance of the principle that, as regards countries in which such constitutional difficulty arose, all proceedings in the International Prize Court should be treated as a rehearing of the case *de novo*, in the form of an action for compensation, whereby the validity of the judgments of the national courts would remain unaffected, whilst the duty of carrying out a decision of the international court ordering the payment of compensation would fall upon the government concerned.

The proposal was further coupled with the suggestion that the jurisdiction of the International Prize Court might be extended, by agreement between two or more of the signatory powers, to cover cases at present excluded from its jurisdiction by the express terms of the Prize Court Convention, and that in the hearing of such cases that court should have the functions, and follow the procedure, laid down in the Draft Convention relative to the creation of a Judicial Arbitration Court, which was annexed to the Final Act of the second Peace Conference of 1907.

Great hesitation was felt in approaching these questions. It was undeniable that they lay wholly outside the programme which the Conference had been invited to discuss, and to which the powers accepting the invitation had expressly assented. It was, however, not disputed that so much of the United States' proposal as related to the difficulties in the way of the ratification of the Prize Court Convention was in so

far germane to the labours of the Conference, as these also were avowedly directed to preparing the way for the more general acceptance of the Prize Court Convention. As it must clearly be desired by all countries interested in the establishment of the International Prize Court that the United States should be one of the powers submitting to its jurisdiction and bound by its decisions, the Conference thought it right, notwithstanding its lack of formal authority, to go so far as to express the wish ("vœu") which stands recorded in the final protocol of its proceedings, and of which the substance is that the attention of the various governments represented is called by their delegates to the desirability of allowing such countries as are precluded by the terms of their constitution from ratifying the Prize Court Convention in its present form, to do so with a reservation in the sense of the first part of the United States' proposal.

On the other hand, the question of setting up the Judicial Arbitration Court, which seemed to have no necessary connexion with the Prize Court Convention, was decided by all the delegations, except that which had brought it forward, to be one which the Conference could not discuss. It was observed with conclusive force that the Conference was attended by delegates of the principal naval powers, whose unanimous agreement on questions of naval warfare might not unreasonably be expected to carry weight with other states, but which had neither formal nor moral authority for taking up a scheme that had failed to find general acceptance at The Hague owing to the decided opposition of the very powers not represented at the present Naval Conference.

It is well to add here that, largely through the endeavors of the American delegation, the adopted declaration stands by itself as a finished convention and does not depend for its future existence upon the ratification of the convention to establish the International Prize Court. This method of formulation was in accord with our instructions.

Articles 65 and 66 emphasize this independence and read as follows:

ARTICLE 65. The provisions of the present Declaration must be treated as a whole, and can not be separated.

ARTICLE 66. The signatory powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

In closing I cannot do better than repeat the quotation made by the Earl of Desart at our final meeting from the remarks of Sir Edward Fry in the closing days of the Second Hague Conference. Sir Edward said:

I have not the intention to pass in review the works of this Conference. I will confine myself to make the remark, that, of all the projects that we have adopted the most remarkable, to my view, is that of the Court of Prizes, because it is the first time in the history of the world that there has been organized a court truly international. International law of today, is not much more than a chaos of opinions which are often contradictory, and of decisions of national courts based upon national laws. We hope to see little by little formed in the future, around this court, a system of laws truly international which will owe its existence only to principles of justice and equity, and which consequently will not only command the admiration of the world, but the respect and obedience of civilized nations.

The Declaration of London, 1909, is the first result of those expected by Sir Edward Fry from the Prize Court Convention of 1907, and I hope it will be found to meet the standards desired by this revered English jurist.

The CHAIRMAN (Mr. Davis). I now take great pleasure in announcing that the discussion will be continued by Rear Admiral Sperry, who, you will remember, was the naval delegate to the Hague Conference. Of the skill and ability with which the negotiations were conducted in respect to all naval questions by Admiral Sperry, I was a daily and constant witness. I have great pleasure in presenting him to this Society.

ADDRESS OF MR. CHARLES S. SPERRY, OF WASHINGTON, D. C.

It is a great satisfaction to avail myself of so notable an occasion to express an opinion as to the admirable work done by the Naval Conference of London in which the representatives of the United States took so distinguished a part.

For may years the Institute of International Law has been publishing in its proceedings discussions of the highest value as to the

proper rules of maritime war, but until the Hague Conference of 1907 they had never been considered by the official representatives of the powers who had authority to make such mutual arrangements and concessions as were necessary for an agreement. At the Second Hague Conference several very important conventions were accepted, more important than the world at large appears to appreciate, but many grave questions were left open, partly because of the pressure for the solution of matters relating to arbitration and the peaceful settlement of international disagreements.

Such was notably the case in the matter of contraband. A special committee was appointed to prepare a definition and regulation, but a list of absolute contraband having been accepted the work ceased as several delegations were awaiting instructions which did not arrive in time to proceed.

Contraband not being defined there was a fundamental difficulty in proceeding with the discussion of other questions: for instance, it was impossible to deal effectively with the question of blockade, since if the rights of blockade were limited, contraband remaining unrestricted, the probable result would have been a wide extension of the list of contraband with a corresponding increase of seizures on the high seas and possibly an increase in the number of neutral prizes destroyed. If one class of contraband had been accepted consisting of articles absolutely and solely suitable to military use, and readily recognizable as such, the destruction of prizes before adjudication might have been dealt with satisfactorily, for a neutral vessel could hardly carry any considerable portion of such contraband innocently.

Professor Renault may well say in his admirable general report to the conference that the chapter on contraband is one of the most important, if not the most important of the declaration, since it treats of a matter which has at times created grave conflicts between neutrals and belligerents. The skill with which contraband has been defined and limited, thus narrowing the field of possible conflict, is beyond praise.

Article 22 of the declaration enumerates objects which are inherently military, and supplied for a military purpose, and as they become contraband by the mere fact of the opening of hostilities no

neutral can be unaware of the risk incurred in endeavoring to deliver them after a declaration of war. It is notable, also, that this class of contraband only is subjected to the vexed law of continuous voyage.

Article 24 enumerates the objects which may be declared contraband when destined for the use of the armed forces of the enemy, or for his administration, but while it is obvious that all of them are at times adaptable to both civil and military purposes, a too free construction is barred by the list of objects enumerated in article 28 which cannot be declared contraband under any condition. This latter list is notable for the exemption of large classes of raw materials used for industrial and other purposes.

Considering the general question of property on the high seas in connection with the subject of contraband, it may be said that the rights of the person being humanely safeguarded, as they have been by the several Hague Conventions, conventional agreement in respect to rights of property can only be safe if they show due respect for the supreme right of self preservation, and, in fact, represent customs which are so generally accepted as to be about to crystallize into law. If in the stress of war it is found that the rights of either attack or defense have been unduly hampered out of respect for property which can be paid for if taken or destroyed, the representatives who have entered into such engagements will be considered by their countrymen neither intelligent nor patriotic and the conventions themselves will place a premium on bad faith.

The immunity of private property on the high seas is certainly approaching because of the changing conditions of maritime warfare. The expense of building and maintaining fighting ships has become so large that all the great powers have concentrated their expenditures on purely military fleets for the control of the seas, that is, ships of the line of battle and the auxiliaries which must attend them constantly for the purposes of scouting, information, and supply. Battleships can not be dispersed to chase tramp steamers nor can the auxiliaries be spared for such work. Even the search after military contraband is likely to be often relaxed for the reason that the facilities for transit through the ports of neutral countries are

such that the search is likely to be in vain. It seems probable, then, that the practical immunity of private property is not far off since the control of the sea communication is the vitally important object to which all other considerations must be sacrificed, and the principal object of blockades will not be the actual stoppage of supplies which can come in by many routes in sufficient quantity for emergencies, but to close a port. If New York were blockaded there is no port on the Atlantic coast which could handle its commerce and the loss would be incalculable.

There seems to be a popular misapprehension as to the immunity of private property on land. Food, clothing, fuel, animals, and all articles necessary for the immediate maintenance of the troops present may be freely taken, even from the homes of the people, upon requisition made by the commander, and the Hague Convention of 1899 simply provides that if cash is not paid a receipt shall be given: but it was expressly denied in conference that this receipt implied any obligation to make payment. The receipt simply affords protection against undue exactions from the individual and a basis of settlement between the states themselves and with their own people, should they choose to assume the responsibility.

On the contrary, property on the high seas is not in the hands of the consumer but usually belongs to great traders who have covered it by insurance, and in all cases the seizure must be justified before a prize court.

The difficult question of the limits of a blockade has been treated with great skill and the hitherto indefinite limits have been restricted by the provision that prizes can only be made within the radius of action of the vessels of the blockading squadron, which have been named as such, nor can a vessel which has attempted to violate the blockade be seized by any vessel not belonging to the blockading squadron if the chase has been abandoned by the blockaders.

No settlement of the question of the destruction of neutral prizes before adjudication was made at The Hague and the provisions of articles 40 and 49 of the declaration therefore remove a grave danger. Under article 40 a vessel is not confiscable unless the contraband on

board either by value, weight, or volume, or by proportion of freight money, represents more than half of the cargo, and article 49 only allows the destruction of a vessel which is thus subject to confiscation, when it is established as an indispensable preliminary condition, that to let the prize go free would jeopardize the safety of the vessel of war or the success of the operations in which she engaged.

Failing to establish this preliminary condition there must be full indemnification without further inquiry. Certain notable cases of destruction of neutral ships could never have been justified under the present declaration.

Article 61 by abandoning the right to visit and search vessels under convoy of a man of war settles another vexed and dangerous question.

In order to mark the advance made by the London Conference beyond the point reached by the Second Hague Conference only a few of the most important questions have been touched upon, but in general it may be said that the work done in harmonizing the varying practices of the English and continental prize courts so as to provide a body of conventional law, neither too vague nor too rigid for the guidance of the international prize court, is remarkable. It is all the more remarkable because the English and continental systems grew up side by side during the great maritime wars of the eighteenth and nineteenth centuries and were apparently irreconcilable, since one was the law of the blockader, seeking to increase the effectiveness of the blockade, and the other was that of the blockaded seeking to relax its stringency.

Inspired by a personal knowledge of the laborious, trying, and apparently futile discussions which were prolonged for nearly five months at The Hague in 1907, my congratulations on the work done by the London Naval Conference are most profound. Without the declaration I am compelled to believe that the International Prize Court would have proved a snare and a delusion instead of being a safeguard of inestimable value to the rights and interests of neutrals and belligerents alike, as it will be if this declaration is ratified. International conventional laws make an international tribunal logical and necessary.

The CHAIRMAN (Mr. Davis). Before proceeding to the regular order, I am authorized by the executive committee to announce that at this stage of the meeting we will hear a very brief report from Dr. Hamilton Wright, the American representative of the Opium Commission, which has been doing so much work in the East. I have the pleasure of presenting Dr. Wright.

REPORT OF DR. HAMILTON WRIGHT, OF WASHINGTON, D. C.

Mr. Chairman, and Members of the Society: I was asked, rather unexpectedly, by Dr. Scott to address you informally on the organization of the International Opium Commission which has just broken up at Shanghai, and to outline the results of the conference so far as they have brought forward the settlement of the opium question.

The conference as originally called for by our State Department was to have been a conference with full powers. At the suggestion of Great Britain, however, that idea was modified somewhat, and it was decided that there should be first a commission called together to study the question before any of the existing agreements under which the opium traffic is conducted would be modified. It was expected that the commission would thoroughly study the opium question and make recommendations for its final settlement. In accordance with this agreement between the powers represented, the commission met at Shanghai on the first of February and organized under the rules in regard to commissions as adopted at the last Hague Conference.

There were twelve delegations present, representing the great, and some of the minor, powers. Great Britain, France, Germany, Austria-Hungary, Italy, Russia, and Japan all had very representative delegates; so also the Netherlands, China, Persia, and Siam. All of these nations have treaties with China governing the opium traffic except Persia and Siam, and it was one of the features of the conference that China was willing to submit her opium problem to two countries with which she has no treaty relations.

The American delegation went to the conference hampered in no